

AO 108 (Rev. 06/09) Application for a Warrant to Seize Property Subject to Forfeiture

FILED

UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

for the

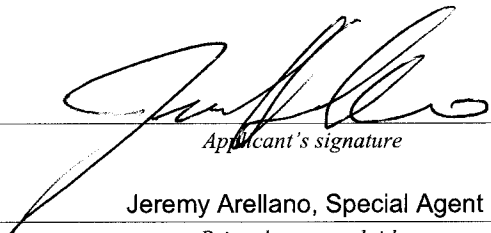
MAR 12 2020

District of New Mexico

In the Matter of the Seizure of
(Briefly describe the property to be seized)
THE DOMAIN NAME: moaihobby.comCase No. 20 mr 469MITCHELL R. ELFERS
CLERKAPPLICATION FOR A WARRANT
TO SEIZE PROPERTY SUBJECT TO FORFEITUREI, a federal law enforcement officer or attorney for the government, request a seizure warrant and state under penalty of perjury that I have reason to believe that the following property in the Eastern District ofVirginia is subject to forfeiture to the United States of America under 18 U.S.C. §
981, 2323 (describe the property):

THE DOMAIN NAME: moaihobby.com

SEE ATTACHMENT A

The application is based on these facts:
See supporting affidavit☒ Continued on the attached sheet.

 Applicant's signature
 Jeremy Arellano, Special Agent
 Printed name and title

Sworn to before me and signed in my presence.

Date: 3/12/2020City and state: Albuquerque, New Mexico

 Judge's signature
 United States Magistrate Judge
 Printed name and title

IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA

v.

THE DOMAIN NAME: **moaihobby.com**

AFFIDAVIT IN SUPPORT OF SEIZURE WARRANTS

I, Jeremy Arellano, being duly sworn, deposes and states as follows:

INTRODUCTION

1. I am a Special agent of the Department of Homeland Security (“DHS”), Homeland Security Investigations (“HSI”), Immigration and Customs Enforcement, and have been so employed since March 1, 2010. As such, I am a law enforcement officer of the United States within the meaning of Title 18 U.S.C. § 2510(7) and am empowered by law to conduct investigations and to make arrests for offenses in violation of United States Code. While working as a Special Agent with HSI, I have directed or otherwise participated in complex investigations into violations of federal law involving the illegal export of U.S. military hardware and munitions, financial crimes, narcotics, national security, identity theft, customs fraud, and human

smuggling. Prior to HSI, I was employed as a Special Agent with the Naval Criminal Investigative Service.

2. I make this affidavit in support of the government's application, pursuant to Title 18, United States Code, Sections 2323(a)(1)(B) and 981 for warrants to seize the following property:

The domain name **moaihobby.com** (the "Subject Domain") which is registered with Verisign, 12061 Bluemont Way, Reston, Virginia 20190.

3. The procedure by which the government will seize the Domain Names are described in Attachment A and below.

4. As set forth below, there is probable cause to believe that the Subject Domain Names are property used, or intended to be used, to commit or facilitate Trafficking in counterfeit goods, services or labels (18 U.S.C. § 2320), and are subject to seizure and forfeiture pursuant to 18 U.S.C. 2323(a).

5. This Affidavit does not provide all the information known to your Affiant, but does provide sufficient information to support probable cause.

TECHNICAL BACKGROUND

6. Based on my training and experience and information learned from others, I am familiar with the following terms:

a. Internet Protocol Address: An Internet Protocol address (IP address) is a unique numeric address used by computers on the Internet. An IP Address is a series of four numbers, each in the range 0-255, separated by periods (e.g., 121.56.97.178). Every computer attached to the Internet must be assigned an IP address so that Internet traffic sent from and directed to that computer may be directed properly from its source to its destination. An IP address acts much like a home or business street address -- it enables computers connected to the Internet to properly route traffic to each other. The assignment of IP addresses to computers connected to the Internet is controlled by ISPs.

b. Domain Name: A domain name is a simple, easy-to-remember way for humans to identify computers on the Internet, using a series of characters (e.g., letters, numbers, or other characters) that correspond with a particular IP address. For example, “usdoj.gov” and “cnn.com” are domain names.

c. Domain Name System: The domain name system (“DNS”) is, among other things, a hierarchical convention for domain names. Domain names are composed of one or more parts, or “labels,” that are delimited by periods, such as “example.com.” The hierarchy of domains descends from right to left; each label to the left specifies a subdivision, or subdomain, of the domain on the right. The right-most label conveys the “top-level” domain. For example, the domain name “example.com” means that the computer assigned that name is in the “.com” top-level domain, the “example” second-level domain, and is the web server.

d. Domain Name Servers: DNS servers are computers connected to the Internet that convert, or resolve, domain names into Internet Protocol (“IP”) addresses. For each top-level domain (such as “.com”), there is a single company, called a “registry,” that determines which second-level domain resolves to which IP address. For example, the registry for the “.com” and “.net” top-level domains is VeriSign, Inc., which has its headquarters at 21355 Ridgetop Circle, Dulles, Virginia.

e. Registrar & Registrant: Domain names may be purchased through a registrar, which acts as the intermediary between the registry and the purchasers of the domain name. The individual or business that purchases, or registers, a domain name is called a “registrant.” Registrants control the IP address, and thus the computer, to which their domain name resolves. Thus, a registrant may easily move a domain name to another computer anywhere in the world. Typically, a registrar will provide a registrant with the ability to change the IP address to which a particular IP address resolves through an online interface. Registrars typically maintain customer and billing information about the registrants who used their domain name registration services.

PROBABLE CAUSE FOR SEIZURE AND FORFEITURE

7. This application arises from an investigation into websites that are being used in the connection with the illegal trafficking of counterfeit goods.

8. All of the items purchased by your Affiant from the websites detailed in this affidavit are products that bear marks that are registered with the United States Patent and Trademark Office (“USPTO”). According to the USPTO, a trademark is a brand name and includes any word, name, symbol, device, or any combination, used or intended to be used, in commerce to identify and distinguish the goods of one manufacturer or seller from goods manufactured or sold by others and indicate the source of the goods and copyrighted materials.

THE MOAIHOBBY.COM DOMAIN

9. On or around November 2018, Homeland Security Investigations, Albuquerque, New Mexico, initiated an investigation into the Subject Domain after it was reported they sold counterfeit parts made by U.S. company Ergo, which is a U.S. firearm accessory company. Your affiant visited the Subject Domain and observed it purported to sell parts for airsoft guns, which are not real guns. The Subject Domain contained a wide variety of airsoft related parts from a variety of manufacturers. The Subject Domain is an online retailer, offering payment through PayPal Payment Service (“PayPal”).

10. Your affiant recognized several parts purporting to be from Ergo and other U.S. companies that sell firearms components. Your affiant observed that the Subject Domain purported to sell Ergo Grip Ladder Style Low Pro Rail Cover, Ergo 2 Grip for M4 GBB, Ergo

Grip F93 Pros Stock for M4/M16 AEG, Ergo 18-Slot Lowpro Ladder Rail Cover, Ergo Grip 7-Slot Ladder Style Lowpro Rail Cover, and the Ergot PTS M4 4 Rail Handguard. All of the parts had the Ergo trademark and purported to be real Ergo parts. The Subject Domain provided a mailing address of 16651 Johnson Drive, Industry, California 91745, and an email address of moai01@moaihobby.com.

11. On or around December 4, 2018, an HSI Undercover Agent (UCA) purchased the following items from the Subject Domain:

- a. Ergo Grip F93 Pro Stock for M4/M16 GBB rifle - \$89.99
- b. Ergo 18-Slot Lowpro Ladder Rail Cover 2 Pack Foliage Green - \$18.45
- c. Ergo Grip 7-Slot Ladder Style Lowpro Rail Cover 2 pack Black - \$9.25
- d. Ergo Grip 7-Slot Ladder Style Lowpro Rail cover 2 pack Dark Earth - \$9.25
- e. Ergo 18-Slot Lowpro Ladder Rail Cover 2 Pack Black - \$18.45
- f. Ergo 18-Slot Lowpro Ladder Rail Cover 2 Pack - Oliver Drab - \$18.45

12. The UCA submitted payment for the items through PayPal. A shipping cost of \$29 was added to the order. Shortly after submitting the payment, the UCA received an email from moai01@moaihobby.com that confirmed the order and stated the item would be shipped via Air Parcel from Hong Kong. The UCA also received a payment confirmation from PayPal and reported the seller was MOAIHOBBY INTERNATIONAL COMPANY.

13. On or about December 14, 2018, HSI received the ordered parts. The items were as described by the Subject Domain. The parts shipped from an address in Hong Kong.

14. On or about December 19, 2018, photographs of the parts purchased by the UCA from the Subject Domain were taken and provided to a representative of Ergo. The representative examined the photos and informed your affiant that the purchased goods were counterfeit and were not manufactured by rightsholder.

15. On or about February 1, 2019, a UCA made a second online purchase of Ergo parts from the Subject Domain. The following items were purchased.

- a. Ergo 18-Slot Lowpro Ladder Rail Cover 2 Pack Foliage Green - \$18.45
- b. Ergo Grip 7-Slot Ladder Style Lowpro Rail Cover 2 pack Black - \$9.25
- c. Ergo Grip 7-Slot Ladder Style Lowpro Rail cover 2 pack Dark Earth - \$9.25
- d. Ergo 18-Slot Lowpro Ladder Rail Cover 2 Pack Black - \$18.45
- e. Ergo 18-Slot Lowpro Ladder Rail Cover 2 Pack - Oliver Drab - \$18.45

16. The UCA submitted payment for the items through PayPal. A shipping cost of \$29 was added to the order. Shortly after submitting the payment, the UCA received an email from moai01@moaihobby.com that confirmed the order and stated the item would be shipped via Air Parcel from Hong Kong. The UCA also received a payment confirmation from PayPal and reported the seller was MOAIHOBBY INTERNATIONAL COMPANY.

17. On or about February 15, 2019, HSI received the ordered items. The items were as described by the Subject Domain. The parts shipped from an address in Hong Kong.

18. On or about February 20, 2019, photographs of the parts purchased by the UCA from the Subject Domain were taken and provided to a representative of Ergo. The

representative examined the photos and informed your affiant that the purchased goods were counterfeit and were not manufactured by rightsholder.

19. On or about March 21, 2019, a UCA made a third online purchase from the Subject Domain. This time the order consisted of Ergo, Magpul Industries and Knights Armament Company (“KAC”) parts from the Subject Domain. The following items were purchased:

- a. ERGO 18-Slot Lowpro Ladder Rail Cover 2 Pack – Olive Drab – \$18.45
- b. ERGO 18-Slot Lowpro Ladder Rail Cover 2 Pack – Foliage Green – \$18.45
- c. ERGO 18-Slot Lowpro Ladder Rail Cover 2 Pack – Black – \$18.45
- d. Magpul PTS – MOE Pistol Grip for GBB M4 Rifle – Black - \$21.75
- e. Magpul PTS – MOE Polymer Trigger Guard for M4 GBB / PTW – Black - \$11.00
- f. Magpul PTS MOE Rifle Length Handguard – Olive Drab – \$37.95
- g. Magpul PTS MOE Polymer Trigger Guard for M4/M16 Series AEG – Black
- h. Knight’s Armament Airsoft Fully Licensed KAC Triple Tap Flash Hider – CCW
- i. Knight’s Armament Airsoft Fully Licensed KAC QDC 3-Prong Flash Hider for QDC Barrel Extension CCW - \$27.50
- j. Rainier Arms Mini XT Compensator AR15 – CCW - \$30.25

20. The UCA submitted payment for the items through PayPal. A shipping cost of \$46 was added to the order. Shortly after submitting the payment, the UCA received an email from moai01@moaihobby.com that confirmed the order and stated the item would be shipped via Air Parcel from Hong Kong. The UCA also received a payment confirmation from PayPal and reported the seller was MOAIHOBBY INTERNATIONAL COMPANY.

21. On or about April 5, 2019, HSI retrieved the ordered items. The items were as described by the Subject Domain. The parts shipped from an address in Hong Kong. Photographs of the parts purchased by the UCA from the Subject Domain were taken and provided to representatives of Ergo, Magpul Industries, and KAC. The representatives examined the photos and informed your affiant that the purchased goods were counterfeit and were not manufactured by rightsholder.

22. Brand representatives of Ergo and KAC reported they sent cease and desist letters to the Moaihobby company at their public address: 16651 Johnson Drive, Industry, California 91745 and to the email address of moai01@moaihobby.com. One of the brand representatives did not send a cease and desist because Moaihobby was already know to them. The brand representative reported between May 2013 and December 2014, an entity using the email "moai@moaihobby.com" was selling counterfeit products at online Auction site "EBay", and as a result, Ebay removed the items from the auction sites.

23. As of March 11, 2020, the Subject Domain continues to advertise counterfeit parts from Magpul, Ergo, and KAC for sale.

24. A search of publicly available WHOIS domain name registration records revealed that the Subject Domain was registered on or about April 4, 2009, through the registrar Onlinenic.com which has its headquarters at 3027 Teagarden Street, San Leandro, California. The publicly available WHOIS database lists the Subject Domain registrant as Taren To, Hong Kong Technology Information Ltd. , 9 Hoi Shing Road, Tsuen Wan, N.T. Hong Kong.

25. Publicly available WHOIS records also revealed that the Subject Domain site is hosted on a computer assigned IP address 104.207.236.201.

STATUTORY BASIS FOR SEIZURE AND FORFEITURE

26. Title 18, United States Code, Section 2323(a)(1)(B) provides, in relevant part, that any property used, or intended to be used to commit or facilitate trafficking in counterfeit goods, services or labels, in violation of Title 18, United States Code, Section 2320 are subject to both civil and criminal forfeiture to the United States government.

27. Title 18, United States Code, Section 2323(a)(2) provides that the procedures set forth in Chapter 46 of Title 18 (18 U.S.C. § 981, et seq.) shall extend to civil forfeitures under Section 2323(a). Title 18, United States Code, Section 981(b)(1) authorizes seizure of property subject to civil forfeiture based upon a warrant supported by probable cause. Title 18, United States Code, Section 981(b)(3) permits the issuance of a seizure warrant by a judicial officer in any district in which a forfeiture action against the property may be filed and may be executed in any district in which the property is found.

28. Neither a restraining order nor an injunction is sufficient to guarantee the availability of the Subject Domain Names for forfeiture. By seizing the Subject Domain Names and redirecting them to another website, the Government will prevent third parties from acquiring the names and using them to commit additional crimes. Furthermore, seizure of the Subject Domain Name will prevent third parties from continuing to access the Subject Domain websites.

29. As set forth above, there is probable cause to believe that the Subject Domain Names are subject to both civil and criminal forfeiture because they were used in the commission of criminal copyright infringement and conspiracy to commit criminal copyright infringement.

SEIZURE PROCEDURE

30. As detailed in Attachment A, upon execution of the seizure warrant, the registry for the Subject Domain shall be directed to restrain and lock the Subject Domain Names pending transfer of all right, title, and interest in the Subject Domain Names to the United States upon completion of forfeiture proceedings, to ensure that changes to the Subject Domain Names cannot be made absent court order or, if forfeited to the United States, without prior consultation with HSI. The registry for the Subject Domain is VeriSign, Inc., 21355 Ridgetop Circle, Dulles, Virginia 20166.

31. In addition, upon seizure of the Subject Domain Names by HSI, Verisign will be directed to point the Subject Domain Names to a particular IP address, which will display a web page notifying users, including the registrants, of the seizure of the Subject Domain Names.

32. Upon completion of forfeiture proceedings, all Domain Name Records for the Subject Domain Names will be changed to reflect the transfer of ownership to the United States.

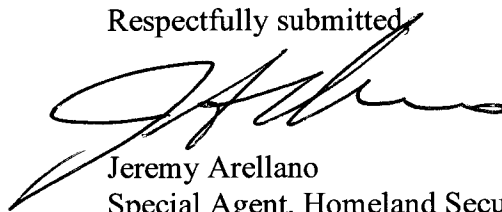
CONCLUSION

33. Based on the information contained in this affidavit there is probable cause to believe that the Subject Domain Names are property that have been used or are intended to be used to commit or facilitate criminal trafficking in counterfeit goods, services or labels. Accordingly, the Subject Domain Names are subject to civil forfeiture under 18 U.S.C. § 2323(a) and seizure pursuant to 18 U.S.C. § 981(b).

34. Accordingly, it is requested that seizure warrants be issued for the Subject Domain.

35. FURTHER THIS AFFIANT SAYETH NOT

Respectfully submitted



Jeremy Arellano
Special Agent, Homeland Security Investigations

Subscribed and sworn to before me on March 12, 2020


UNITED STATES MAGISTRATE JUDGE

ATTACHMENT A

Moaihobby.com

I. Seizure Procedure

A. The seizure warrant will be presented in person or transmitted via facsimile or email to personnel of the domain name registry listed in Section II (“Subject Registry”) who will be directed, for the domain name listed in Section III (“Subject Domain Name”) for which it serves as the top-level domain registry, to make any changes necessary to restrain and lock the domain name pending transfer of all rights, title, and interest in the Subject Domain Name to the United States upon completion of forfeiture proceedings.

B. Upon seizure of the Subject Domain Names, the Subject Registry shall point the Subject Domain Names to the IPR Center’s Domain Name ns1.seizedservers.com and ns2.seizedservers.com, at which the Government will display a web page with the following notice:

This domain name has been seized by ICE - Homeland Security Investigations pursuant to a seizure warrant issued by a United States District Court under the authority of Title 18, United States Code, Sections 981 and 2323.

Willful copyright infringement is a federal crime that carries penalties for first time offenders of up to five years in federal prison, a \$250,000 fine, forfeiture and restitution (Title 17, United States Code, Section 506, Title 18, United States Code, Section 2319). Intentionally and knowingly trafficking in counterfeit goods is a federal crime that carries penalties for first time offenders of up to ten years in federal prison, a \$2,000,000 fine, forfeiture and restitution (Title 18, United States Code, Section 2320).

C. Upon seizure of the Subject Domain Names, the Subject Registry will take all steps necessary to restrain and lock the domain at the registry level to ensure that changes to the subject domain names cannot be made absent a court order or, if forfeited to the United States government, without prior consultation with United States Homeland Security Investigations. All name server fields will be changed to reflect “ns1.[Subject Domain Name]” and “ns2.[Subject Domain Name]” i.e:

a. “ns1.moaihobby.com” and/or “ns2.moaihobby.com”

II. Subject Registry

VeriSign, Inc.

12061 Bluemont Way

Reston, VA 20190

III. Subject Domain Name

a. moaihobby.com